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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,775	12/12/2003	William Stuart Gatley JR.	66745-43522	1876

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04/13/2007

EXAMINER

BERTHEAUD, PETER JOHN

ART UNIT

PAPER NUMBER

3746

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/13/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/734,775

Applicant(s)

GATLEY ET AL.

Examiner

Peter J. Bertheaud

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This office action is in response to the amendments of 1/26/2007. It is noted that claims 1, 2, 5, 16, and 20 have been amended. In making the below rejections and/or objections the examiner has considered and addressed each of the applicant's arguments.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 16-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 16, it is stated, "the guard having an outer side wall...and completely covering the inlet vent opening, the guard having a configuration that allows ambient air to pass through the guard and then through the inlet vent opening" this phrase is indefinite due to the contradictory nature in which it is written. How can an opening be *completely* covered but still allow air in?

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Morgan 6,474,981.

Morgan discloses a furnace blower (32) that is attachable to a separate heater, the heater blower housing (32) comprising: a fan compartment (42) in the heater blower housing; a fan (38) in the fan compartment; a motor (36) operatively connected to the fan for rotation of the fan in the fan compartment by the motor; an exhaust compartment (see Fig. 3, specifically the radial spacing 104 and the area above surface 74 but below fan 38) in the heater blower housing, the exhaust compartment having an exhaust compartment opening that receives exhaust gases from a separate heater when the heater blower housing is attached to the separate heater, the exhaust compartment communicating with the fan compartment and being positioned to receive exhaust gases from a separate heater and to direct the exhaust gases to the fan compartment (see Fig. 3), and at least a portion of the exhaust compartment having a layered wall with at least an interior layer, or what could be considered a heat shield (section of tube 42 that extends from 92 to end wall 58), inside the exhaust compartment and an exterior layer (34, 58) defining an exterior surface (48 and top surface of 58) of the blower housing, the interior layer (or heat shield) and the exterior layer being separate layers of the layered wall. Morgan also discloses the interior wall being positioned on an opposite side of the exhaust compartment from the exhaust compartment opening (see Fig 3) where exhaust gases received from a separate heater are directed toward and contact the interior layer (see col. 2, lines 1-4), and a fan compartment opening (see section of

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42 directly below fan 38) in the heater blower housing communicating the fan compartment with the exhaust compartment (see Fig. 3, specifically the radial spacing 104 and the area above surface 74 but below fan 38); and, the interior wall extending from adjacent the exhaust compartment opening to adjacent the fan compartment opening to direct exhaust gases from the exhaust compartment opening to the fan compartment opening (see Fig. 3). Morgan discloses that the interior layer of the layered wall being spaced from the exterior layer of the layered wall with a hollow void (54) between the interior layer of the layered wall and the exterior layer of the layered wall. Morgan discloses the interior layer (section of tube 42 that extends from 92 to end wall 58) of the layered wall having a curved length as the layered wall extends from adjacent the exhaust compartment opening to adjacent the fan compartment opening, wherein the curved length of the interior layer has a concave cross section (see Fig. 3). Morgan further discloses an exhaust compartment communicating with the fan compartment and having at least a portion of a wall (34, 58) positioned to receive exhaust gases from a separate heater to which the heater blower housing is attached to direct the exhaust gases to the fan compartment; and, a heat shield (section of tube 42 that extends from 92 to end wall 58) attached to the portion of the wall inside the exhaust compartment. Morgan also discloses the heat shield being positioned between the portion of the wall (34, 58) of the exhaust compartment and the exhaust compartment opening (56).

In reference to the rejected claims, particularly claims 1 and 8, while features of an apparatus may be recited either structurally or functionally, claims directed to an

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apparatus must be distinguished from the prior art in terms of structure rather than function, because apparatus claims cover what a device is, not what a device does (Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990)). Thus, if a prior art structure is capable of performing the intended use as recited in the preamble, or elsewhere in a claim, then it meets the claim.

Allowable Subject Matter

6. Claims 16-20 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Response to Arguments

7. Applicant's arguments filed 1/26/2007 have been fully considered but they are not persuasive.

8. In reference to claims 1 and 8, the Applicant argues that Morgan does not disclose a exhaust compartment opening that receives exhaust gases when the blower is attached to a heater. Applicant is correct; however, to claim the invention in this way gives the limitations little patentable weight. Claim 1 begins "A heater blower housing that is attachable" and amended the claims to state "an exhaust compartment opening that receives exhaust gases from a separate heater *when* the heater blower housing is attached to the separate heater". These phrases do not further structurally limit the claim and simply described an intended use for the heater blower housing. If the claims were to explicitly recite that the heater blower housing is attached to the separate heater

Examiner would further consider the allowability of the claims. Therefore, it is held that the application does not distinguish over the prior art in terms of structure.

9. In reference to Applicant's argument that the Examiner misinterpreted Morgan to be disclosing a fan compartment and an interior layer of a wall because they were designated as the same element in the reference: it is reasonable to interpret one part or piece of an invention as two or more separate elements, especially if the part serves more than one purpose. In addition, a compartment is simply an area with some type of boundary; therefore, it is clearly the case that a fan compartment is present due to the fact that 42 surrounds the fan, thus creating a fan compartment. Therefore it is held that the application does not distinguish over the prior art.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of


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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter J. Bertheaud whose telephone number is (571) 272-3476. The examiner can normally be reached on M-F 9am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


PJB
3/30/07


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